SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1093

NORTH CAROLINA FINISHING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Reference to Official Report of Opinion Rendered in Court Below.

The opinion of the United States Circuit Court of Appeals for the Fourth Circuit, which the petitioner now asks this Court to review, is officially reported in 133 F. (2d) 714 (C. C. A. 4th).

Statement of Grounds on Which Jurisdiction of This Court Is Invoked.

Jurisdiction to review and determine this cause is conferred upon the Court by the provisions of Section 347 of Title 28, U. S. C. A.

The petitioner prays the Court to assume such jurisdiction and grant writ of certiorari herein on the grounds that the proper decision of the issue here involved is important in the administration of the National Labor Relations Act (Section 151 *et seq.* of Title 29, U. S. C. A.) and in the determination of future proceedings under that Act, and on the grounds further that the order of the National Labor Relations Board against the petitioner as sustained by the court below deprives the petitioner of its property without due process of law and thereby violates the Fifth Amendment to the Constitution of the United States.

Statement of the Case.

In a proceeding instituted by the National Labor Relations Board against the North Carolina Finishing Company, petitioner herein, the Board found that the petitioner had violated the National Labor Relations Act as follows:

> "That Clarence Boston and Ed Walser, second hands in the employ of the petitioner, made certain statements and that thereby, the petitioner interfered with and restrained and coerced its employes in the exercise of their rights under Section 7 of the Act, thus violating Section 8(1) of the Act;
>
> "That the petitioner discharged and refuses to reinstate one Annie Mae Evington because of union affiliation and activity on her part and that thereby, the petitioner discouraged membership in a labor organization in violation of Section 8(3) of the Act."

The Board made no other findings against the petitioner. Upon petition for review, the Circuit Court of Appeals for the Fourth Circuit affirmed the Board's findings and decreed the enforcement of the Board's order.

The petitioner insists that such decision is not supported by substantial evidence but is, on the other hand, contrary

to the evidence appearing of record and to the law governing the case.

Specification of Error.

The petitioner assigns as error the ruling of the court below in affirming the two findings against the petitioner which are set forth above.

ARGUMENT.

I.

Upon the evidence in this case, it may not be held that through anti-union remarks on the part of two minor supervisory employees, the petitioner violated the National Labor Relations Act.

It is undenied in this case that the attitude and policy of the Management of the Company, which is petitioner here, was one of "no opposition" to the Union among its employees. The Board finds as a fact (R. 16) that in July, 1941, when the management became aware that the Union was undertaking a campaign to "organize" the Company's employees, the vice-president and general manager "called a meeting of the overseers of the plant, told them of the attempts being made to organize the employees, instructed them not to interfere with the employees' right to self-organization * * * and instructed the overseers to pass this information along to the second hands."

Nevertheless, says the Board, inasmuch as two second hands in the plant thereafter made remarks antagonistic to the Union, the Company is to be held as having violated the National Labor Relations Act. One of these offending second hands was named Clarence Boston. The Board

finds (R. 16) that he had the following conversation with another employee, one Clifford Myrick (R. 52):

> "Well, he came up to me. I was working on an air guide. He came up to me and said: 'Slim, they had an overseers' meeting this morning and they decided to give the employees a 2½¢ raise.' He said: 'Mr. Robertson said he hoped the boys would forget about the Union now and not pay someone to dictate to them'."

No other word or act on the part of Boston is alleged or claimed as being in derogation of the employees' rights. And the Board has specifically found (R. 16) that the very wage increase referred to in this conversation between Boston and Myrick "was not granted for the purpose of discouraging union activities" but was "in line with the trend in the industry." Nevertheless, says the Board (R. 16), since second hand Boston "sought" to give employee Myrick a "false impression" as to the purpose of the wage increase, the Company was in violation of the National Labor Relations Act.

It is respectfully submitted that a ruling of this sort puts an employer in a helpless position and one from which he is entitled to deliverance at the hands of the court of justice. Instead of the Management of the Company interfering with the employees' rights, we have here the Management, as the Board itself finds, taking a clear-cut official attitude of "no opposition" to the Union efforts and emphatically instructing all supervisory employees accordingly. Yet the Company is to be held guilty of violating the National Labor Relations Act if a second hand, least in the scale of supervisory employees, disregarding the Management's instructions, makes a statement to a single employee which could be construed so as to give a *false* impression of Company motives which the Board had specifically found to be innocent and proper!

The court below in its opinion (R. 138) makes the point that the anti-union remarks by Boston and by the other second hand in question, one Ed Walser, are not to be regarded as merely expressions of their personal views, for that the "hands off" attitude of the Management had never been communicated to the subordinate employes and "accordingly, the hundreds of employees under the supervision of Boston and Walser could have reasonably believed that the second hands were speaking for the management"—which, says the court, "affords a sufficient basis for liability under the Act." In reply to this, it would seem sufficient to note that the Board finds (R. 17) that on the only occasion when it is claimed that Walser made anti-union remarks to a group of employees, some ten or twelve in number, "the group asked Walser what Robertson (the Company's general manager) thought of the Union and Walser stated that Robertson had said he had always taken care of the workers and if they wanted to organize and join a union and do so themselves, 'to go ahead'."

Had the employees been under any impression that the second hands in expressing anti-union sentiments "were speaking for the management", as the court says, then after listening to such expressions, they would not have proceeded, as the Board finds they did, to inquire "what Robertson thought of the Union". And in any event, they necessarily knew from what the Board finds (R. 17) Walser told them that the specifically expressed attitude of the head of the Company was that "if they wanted to organize and join a union", they should "go ahead". It would thus seem clear that the point upon which the court below relies is not well taken.

In this connection, a further point developed in the opinion of the court below is, the petitioner respectfully submits, without justification. The Court says that in addition to

the remarks made by second hands Boston and Walser, the record reveals certain anti-union conduct on the part of two supervisory employees, Adams and Brinkley. The Court concedes (R. 140) that "the Board did not find that the conduct of Adams and Brinkley constituted an unfair labor practice", but, says the Court, we will put such acts on the part of Adams and Brinkley into the scales against the Company "as a part of the 'totality of the Company's activities' in order to determine whether the Act has been violated". Without questioning the justice of such procedure, the point to be noted is that the fact finding body, here the Board, has not found that the conduct on the part of Adams and Brinkley referred to by the Court ever in fact occurred. The Court, for example, refers to Brinkley as "another supervisory employee", although the Board had made no finding to such effect and the general manager of the Company had, on the other hand, specifically testified at the hearing that Brinkley "is not and never has been a second hand or overseer". The petitioner is thus at a loss to understand how the Court below could "properly consider" against it matters which the fact finding body had never found to exist.

On the whole, as to anti-union activity by supervisory employees, it is established here that the attitude and effort of this employer was not to interfere with its employees in regard to their joining or not joining any labor organization, and all supervisory employees, some forty in number, were carefully and definitely so instructed. Taking a practical and realistic view, it must be apparent that this is about all an employer can do. If, nevertheless, two second hands in chance conversation with employees express personal sentiments to the contrary, or even try to give "false impressions" as to the employer's attitude, is it still to be held that the employer has sought to restrain and coerce his employees and has thus violated the very law which, as the Board itself finds, he was striving not to violate?

If such be the ruling in a situation like this, then the position of the employer under the National Labor Relations Act is not only precarious, but well-nigh hopeless.

There is ample authority against such a ruling. As stated in National Labor Relations Board *v.* Mathieson Alkali Works, 114 Fed. (2d) 796, 802 (C. C. A. 4th):

> "But mere isolated expressions of minor supervisory employees, which appear to be nothing more than the utterance of individual views, not authorized by the employer and not of such character or made under such circumstances as to justify the conclusion that they are an expression of his policy, will not ordinarily justify a finding against him."

See also:

Virginia Electric & Power Company v. *National Labor Relations Board*, 115 Fed. (2d) 414 (C. C. A. 4th); and

National Labor Relations Board v. *Standard Oil Company*, 124 Fed. (2d) 895 (C. C. A. 10th).

> "In the absence of evidence of any policy of prescribed discrimination, an employer should not be held strictly accountable for every isolated utterance of a policy-making officer concerning Union activities. Cf. National Labor Relations Board *vs.* Union Pacific States, supra, 99 Fed. (2d), at pages 178, 179; Jefferson Electric Company *vs.* National Labor Relations Board, supra, 102 Fed. (2d) at page 956. And, where the conduct and actions of the employer fail to indicate any violation of the Act, an assemblage of unrelated, unconnected expressions of opinion does not very deeply impress this Court."
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> Martel Mills Corporation *vs.* National Labor Relations Board, 114 Fed. (2d) 624, 633 (C. C. A. 4th).

> "It is quite clear that all of these conversations took place casually in the course of conversations between

the individuals concerned. There is no evidence that they had the slightest effect in actually preventing or discouraging membership in the Union. The Board nevertheless found that the petitioner was responsible for the statements made by Healy and McElhatten, and that thereby, it interfered with, restrained and coerced its employees in the exercise of the rights of self-organization and collective bargaining guaranteed them by Section 7 of the National Labor Relations Act, 29 U. S. C. A., Section 157. We do not think that this finding is supported by substantial evidence. Isolated statements by minor supervisory employees made casually in conversation with fellow-workers, without the knowledge of their employer and not in the course of their duty or in the exercise of their delegated authority over those employees ought not to be too quickly imputed to their employer as its breach of the law. National Labor Relations Board *vs.* Whittier Mills Company, 111 Fed. (2d) 474, 479 (C. C. A. 5th). This is particularly so where, as here, there is no evidence of any policy on the part of the employer to authorize or encourage opposition to Union activity."

Quaker State Oil Refining Corporation *vs.* National Labor Relations Board, 119 Fed. (2d) 631, 633 (C. C. A. 3rd).

Cf:

E. I. DuPont de Nemours & Company v. *National Labor Relations Board,* 116 Fed. (2d) 388, 400 (C. C. A. 4th); and

Wilson & Company v. *National Labor Relations Board,* 120 Fed. (2d) 913, 1919 (C. C. A. 7th).

II

There is no substantial evidence to support the conclusion that in discharging and refusing to reinstate Annie Mae Evington, the petitioner violated the National Labor Relations Act.

The Board finds that the petitioner gave a bona fide and truthful explanation of the general situation surrounding

the discharge of this employee. Annie Mae Evington's principal duties in the petitioner's plant were to inspect and fold sheets. As inspector, it was her business to detect any defects in the sheets, "very bad or glaring" defects being known as "thirds". The Board finds (R. 23) that:

> "The record discloses that on several occasions during the eighteen weeks period when records were kept, Walser and Grubb called the inspectors together and cautioned them about their release of 'thirds'. Walser testified that he had warned the inspectors as a group that some would be 'laid off' if they continued to pass as many 'thirds'. Grubb testified that about the middle of September, 1941, he gave the inspectors as a group a final warning that 'if you keep your jobs, you are going to have to improve your inspection'. Grubb further stated, without denial, that Evington was present when he gave his final warning."

Coleman Grubb, overseer of the department in question, testified (R. 66):

> "* * * I have now been overseer of the sewing room for three and a half years—that is, up to that time; and before last summer, a complaint was a rarity; and during the spring and summer of 1941, we had what I would term an epidemic of complaints."

Annie Mae Evington, the employee in question, testified (R. 53):

> "Q. Miss Evington, referring to Board's Exhibit No. 13, to which I am directing your attention, I note that under the heading 'Reason the Worker is Leaving our Service', is typed in 'Work Unsatisfactory'.
>
> "A. Yes, sir.
>
> "Q. Had you been told at any time prior to your discharge that your work was unsatisfactory?
>
> "A. Only in groups, when they called all the rest of the girls.
>
> "Q. Did they on occasion call all the girls together in groups?

"A. Yes.

"Q. On those occasions, what did they say?

"A. They said a lot of mill thirds was being passed and that they wanted the girls to see if they could not cut them down, and if they could not, they would be laid off for a certain length of time; I don't remember how long—a couple of weeks.

Q. Approximately how many of those groups discussions did you attend after your transfer to the day shift? Did they hold them quite frequently?

"A. Yes, they did.

"Q. Would you say once a week?

"A. Well, I don't know whether it was once a week or something like that. They don't have no certain time to have them."

Mrs. Mary Sowers, another sheet inspector, testified (R. 71):

"Q. At that time, did Mr. Grubb say anything about losing his job?

"A. Yes, sir, he said his job meant as much to him as ours did to us and that he could not afford to lose his job by our bad work, and that we had to do our work better or we would lose our jobs."

Grubb further testified (R. 63):

"* * * But I called all the inspectors together and gave them a final warning, and in this warning I really tried to make myself clear and put it very strongly that the situation was bad and had been bad for a long period of time, and that my job was being jeopardized as well as theirs, and that I was going to do everything possible to keep my job. I said: 'If you keep your jobs, you are going to have to improve this inspection' * * *"

The Board itself concludes (R. 27):

"We are of the opinion that the record establishes that the respondent was concerned over the number of

'thirds' passed and had taken appropriate steps to remedy the situation by warning its inspectors."

In the midst of this situation, Grubb, the overseer, discharged two of the inspectors—Annie Mae Evington on September 25th and Mary Doby on September 26th. Grubb testified that he discharged these two employees for the reason that the Company's records showed that they had "passed" or failed to detect a larger number of "thirds" in a shorter period of time than any of the other inspectors. The Board finds that the Company's records did show such to be a fact, and there is set forth in the Board's Decision and Order (R. 25) a tabulation showing the relative standing of the inspectors in this respect. That there was a situation which justified such action as Grubb took and that his acting was appropriate is significantly indicated by the fact that the Company's records showed a marked increase in the efficiency of the inspection department after the discharge of these two employees (R. 64-65).

The situation presented then, according to the Board's own findings, is this: The Company "was concerned over the number of 'thirds' passed" by its inspectors, the Company undertook "appropriate steps to remedy the situation by warning the inspectors", the condition, however, continued and the Company thereupon discharged the two inspectors who had the worst record for inefficiency. Yet the Board concludes that since the Company had opportunity to know that one of these employees was active in behalf of the Union, such activity on her part was the true reason the Company discharged her.

The Board says (R. 27): "We are not satisfied that Evington was discharged for having passed the largest number of 'thirds' as the respondent asserts". The court below says (R. 143): "The Company's position does not stand up under scrutiny". Both the Board and the Court

seem unconsciously to slip into the attitude that unless the employer affirmatively proves that he discharged an employee for some other reason, it will be assumed that union affiliation was the reason. The burden of proof is, of course, exactly the contrary, and upon the Board to prove that union affiliation and not something else was the reason for the employee's discharge.

> "In its capacity as accuser, the Board, under the genius of our institutions, is held to the same burdens and obligations of proof as any other litigant who takes the affirmative. It may not by accusing put the accused upon proof. As accuser, it must prove its charge."
>
> Magnolia Petroleum Company *vs.* National Labor Relations Board, 112 Fed. (2d) 545, 548 (C. C. A. 5th).

The basis of the decision against the Company with respect to Annie Mae Evington seems to be that the Company claimed to have discharged her for passing the largest number of "thirds", but failed to prove that she did pass the largest number. Six times in its discussion (R. 21-25) of Evington's discharge, the Board reiterates this point. This is clear error. The Board's misapprehension in this respect originally appears in the first paragraph of its Decision and Order dealing with Evington's discharge (R. 21), where it is stated that:

> "The respondent's answer . . . alleged that she had been discharged because as an inspector, she had passed more defective sheets than any other inspector."

A simple reading of the answer will show that it contains no such allegation or claim. The petitioner does not contend that Evington's record as to efficiency in detecting "thirds" was the worst, but that hers and Mary Doby's were the two worst "which, as pointed out above, the Board finds to be a fact), and, therefore, it discharged them both.

It is true that Mary Doby's record was worse than Annie Mae Evington's. But there is no reason why the Company should not be free in the operation of its business to discharge the next to the worst inspector as well as the worst if it saw fit to do so.

> "The National Labor Relations Act was not intended to empower the Board to substitute its judgment for that of the employer in the conduct of his business. It did not deprive the employer of the right to select or dismiss his employees for any cause except where the employee was actually discriminated against because of his Union activities or affiliation . . . The Act does not vest in the Board managerial authority."
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> National Labor Relations Board *vs.* Union Pacific Stages, 99 Fed. (2d) 153, 177 (C. C. A. 9th), quoted by the Court in Martel Mills Corporation *vs.* National Labor Relations Board, 114 Fed. (2d) 624, 633 (C. C. A. 4th).

> "In view of the very large powers and wide discretion granted by the Act to the Board and the grave consequences of an abuse of these powers and this discretion by the Board, we can not, in the exercise of our function in enforcing the Board's lawful orders and in refusing to enforce those which are not, too often repeat, that it has not been given to the Board to substitute its own ideas of discipline and management for those of the employer."
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> National Labor Relations Board *vs.* Williamson-Dickie Manufacturing Company, 130 Fed. (2d) 260, 267 (C. C. A. 5th).

W. F. Robertson, the petitioner's general manager, testified (R. 56-57):

> "We were talking about the inspection, and Mr. Grubb said he had just about come to the end of his patience. He said he had talked to the girls and had had Ed Walser talk to the girls and had laid off a

> couple back in the spring but there wasn't any improvement, and he had talked to them and it looked like he was going to have to lay off a couple of them to show he meant business and the thing would have to be corrected. I told him I thought it was a good idea . . . I told him about the conversation and told him it was the worst complaint I had heard of in a long time and told him I thought he had better go ahead and discharge the girls the end of that week, and he said he would."

Ed Walser, second hand over the inspection department, testified (R. 49):

> "Well, he (Grubb) told me that they still were getting complaints from the customers about passing these thirds in first quality sheets and we were going to have to do more than we had done about it. We had warned them time and time again. He told me to check the records and to see which ones had passed the most thirds. I checked them, and it was Annie Mae and this Mary Doby and the other girls that I checked. Mary and Annie Mae were the highest two."

Walser further testified (R. 49):

> "Q. Well, did you say anything at the time when you talked with Grubb about Mary Doby and Annie Mae Evington or did you ask him anything further to find out whether this was just a two weeks' lay off or a discharge?
>
> "A. He told me to discharge them. He told me it was a final lay off. He made it clear to me that it was not a two weeks' lay off. He told me to discharge them."

The court below questioning the accuracy of the records showing the relative efficiency of the inspectors says (R. 142): "We note erasures of the notations as to the number of days worked by Doby and Messick, and Walser was unable to explain this faulty state of the records." In this, however, the court overlooks the fact that the Board, fact

finder in this proceeding, accepted (R. 25) as true and accurate the tabulation upon which the petitioner relies.

It would certainly seem to afford no ground for a decision against the petitioner that Evington received her notice of discharge one day earlier than Doby. If, however, any signficance is to be attached to this circumstance, the explanation is to be found in Grubb's testimony (R. 64) that he recalled without a detailed study of the records, Evington's low standing in efficiency, whereas, it required a detailed check of the records to reveal to him that Mary Doby's record also was very low, in fact, the lowest.

The Board says in this connection that Walser, the overseer, gave a false explanation "by intimating that Doby did not work on the day when Evington was discharged", whereas, in truth Doby was at work that day. But Walser made no such intimation and therefore, gave no such false explanation. He testified (R. 49):

> "Q. Was Mary Doby working on that day?
>
> "A. I don't remember whether she was working that day or not, but anyway, I do remember we laid her off the next day she worked. I don't remember whether she was out that day or not.'

Indeed, it was stipulated (R. 50) during the course of the hearing that Doby was working on the day Evington was discharged.

Again, the Board seeks to create an inference against the petitioner by a "finding" that (R. 28):

> "Moreover, within a few days after the discharge of Evington, the respondent discontinued the practice of keeping a record of 'thirds' passed by its various inspectors."

All of the testimony on the point is exactly to the contrary. Walser testified (R. 35):

> "Q. Please look at the calendar which I have in my hand and I will direct your attention to September 26,

1941. How long after Annie Mae was discharged did you keep the records?

"A. We are still keeping records."

Indeed, such records were placed in the possession of the Board's attorney during the hearing (R. 37).

"Q. Do you say that you are keeping such records at the present time?

"A. Yes, sir.

* * * * * * *

"Q. Where are those records?

"A. They are at the plant.

"Q. Will you, during the noon hour, bring in all the records that you have kept from the period since October 1, 1941, to the present time, so we shall have them here in the hearing room?

"A. Yes, sir.

* * * * * * *

"Q. Mr. Walser, as I understand, during the recess you have procured from the plant the records kept of the inspectors from the period after October 1st up to the present time.

"A. Yes, sir.

"Q. They are the records which I hold in my hand. Is that correct?

"A. Yes, sir."

And yet, the Board announces that "within a few days after the discharge of Evington, the respondent discontinued its practice of keeping a record of 'thirds' passed by the various inspectors." The petitioner respectfully submits that it is justified in asking this Court to re-examine such "findings."

The petitioner earnestly contends that the conclusion that Annie Mae Evington was discharged because of Union activity on her part is a "finding" upon suspicion pure

and simple, that the Board did not in any sense meet the burden resting upon it to come forward with substantial and affirmative proof of its charge, and that on the other hand, the petitioner has offered credible and reasonable explanation as to why it discharged this employee.

"In its capacity as accuser, the Board, like any other 'person on whom the burden of proof rests to establish the right of a controversy, must produce credible evidence from which men of unbiased minds can reasonably decide in his favor'. It can not any more than any other litigant, 'leave the right of the matter to rest in mere conjecture and expect to succeed'. Samulski *vs.* Manasha Paper Company, 147 Wis. 285, 133 N. W. 142, 145.

"In its capacity as a trier, the Board is held to the same high standard of impartiality and fairness that a jury is held to, and its findings just as those of a jury, 'must rest on probabilities, not on bare possibilities'. Samulski *vs.* Manasha Paper Company, supra. 'Verdicts can not rest upon guess or conjecture'. Shapleigh *vs.* United Farms Company, 100 Fed. (2d) 287, 289 (C. C. A. 5th).

"The doctrine of those cases condemns the grounding of a verdict upon such shadowy proof as not to establish the 'vital facts to a reasonable certainty'. Samulski *vs.* Manasha Paper Company, supra. Findings of the Board just as jury findings must rest on something firmer than mere suspicion, conjecture or surmise."

Magnolia Petroleum Company *vs.* National Labor Relations Board, 112 Fed. (2d) 545, 548, (C. C. A. 5th).

"Had the issue under discussion been a question for the decision of judge and jury in a trial at common law, the evidence would not have warranted its submission to the jury, and if nevertheless such an issue had been submitted and had been followed by a verdict adverse to the employer, it would have been the duty of the

judge to set it aside and grant a new trial. This is a sound test when the probative force of evidence is to be ascertained, as the Supreme Court and the Circuit Courts have repeatedly held, and it is the proper test to be applied to the findings of fact of an administrative tribunal, which are given finality by statute."

National Labor Relations Board *vs.* Asheville Hosiery Company, 108 Fed. (2d) 288, 293 (C. C. A. 4th) and cases there cited.

"The rule as to substantiality is not different, we think, from that to be applied in reviewing the refusal to direct a verdict at law, where the lack of substantial evidence is the test of the right to a directed verdict. In either case, substantial evidence is evidence furnishing a substantial basis of fact from which the fact in issue can reasonably be inferred; and the test is not satisfied by evidence which merely creates a suspicion or which admits to no more than a scintilla or which gives equal support to inconsistent inferences."

Appalachian Electric Power Company *vs.* National Labor Relations Board, 93 Fed. (2d) 985, 989 (C. C. A. 4th).

"Orders for reinstatement of employees with back pay are somewhat different. They may impoverish or break an employer, and while they are not in law penal orders, they are in the nature of penalties for the infraction of law. The evidence to justify them ought, therefore, to be substantial, and surmise or suspicion, even though reasonable, is not enough.

National Labor Relations Board *vs.* Tex-O-Kan Mills, 122 Fed. (2d) 433, 438 (C. C. A. 5th).

See also:

National Labor Relations Board v. *International Shoe Company*, 116 Fed. (2d) 31, 37 (C. C. A. 8th).

"It is not sufficient to show merely that the employer may have discharged Likert on account of his

Union activities—the evidence must point to that fact. When the testimony shows, as it does here, that the cause of the discharge may have been one of two things, one of which was illegal and the other legal, the fact finding tribunal can not guess between the two causes and find that Union activity was the real cause when there is no satisfactory foundation in the testimony to support the conclusion. Patton *vs.* Texas & Pacific Railway Company, 179 U. S. 658, 653, 21 S. Ct. 275, 45 L. Ed. 361. When evidence is consistent with either of two inconsistent hypotheses, it establishes neither."

> Bussman Manufacturing Company *vs.* National Labor Relations Board, 11 Fed. (2d) 783, 787 (C. C. A. 8th).

Upon all of the foregoing, the petitioner earnestly requests the court to review the decision heretofore rendered in this case.

Respectfully submitted.

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